

I. (a) PLAINTIFFS

DEFENDANTS

County of Residence of First Listed Defendant Norwell, MA
(IN U.S. PLAINTIFF CASES ONLY)

Attorneys (If Known)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only) and One Box for Defendant)

ORIGINAL

E-filing

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FILED
 JUN - 9 2011
 THOMAS W. WIEKING
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

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ADR

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

<p>Terrell Brown</p> <p>Plaintiff,</p> <p>v.</p> <p>Collecto Inc. d/b/a EOS CCA</p> <p>Defendant.</p>	<p>Case No: C11-02816CS</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt

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1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The United States Congress has also found the banking system is dependent
4 upon fair and accurate credit reporting. Inaccurate credit reports directly
5 impair the efficiency of the banking system, and unfair credit reporting
6 methods undermine the public confidence which is essential to the continued
7 functioning of the banking system. Congress enacted the Fair Credit
8 Reporting Act, 15 U.S.C. § 1681 *et seq.* ("FCRA"), to insure fair and accurate
9 reporting, promote efficiency in the banking system, and protect consumer
10 privacy. The FCRA seeks that consumer reporting agencies exercise their
11 grave responsibilities with fairness, impartiality, and a respect for the
12 consumer's right to privacy because consumer reporting agencies have
13 assumed such a vital role in assembling and evaluating consumer credit and
14 other information on consumers. The FCRA also imposes duties on the
15 sources that provide credit information to credit reporting agencies, called
16 "furnishers."

17 3. The California legislature has determined that the banking and credit system
18 and grantors of credit to consumers are dependent upon the collection of just
19 and owing debts and that unfair or deceptive collection practices undermine
20 the public confidence that is essential to the continued functioning of the
21 banking and credit system and sound extensions of credit to consumers. The
22 Legislature has further determined that there is a need to ensure that debt
23 collectors exercise this responsibility with fairness, honesty and due regard
24 for the debtor's rights and that debt collectors must be prohibited from
25 engaging in unfair or deceptive acts or practices.

26 4. Terrell Brown, (Plaintiff), through Plaintiff's attorneys, brings this action to
27 challenge the actions of Collecto Inc. d/b/a EOS CCA, ("Defendant"), with
28 regard to attempts by Defendant to unlawfully and abusively collect a debt

1 allegedly owed by Plaintiff, erroneous reports of derogatory and negative
2 credit information made by Defendant to national reporting agencies, and for
3 failure of Defendant to properly investigate, and this conduct caused Plaintiff
4 damages.

5 5. Plaintiff makes these allegations on information and belief, with the exception
6 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
7 Plaintiff alleges on personal knowledge.

8 6. While many violations are described below with specificity, this Complaint
9 alleges violations of the statutes cited in their entirety.

10 7. Unless otherwise stated, all the conduct engaged in by Defendant took place
11 in California.

12 8. Any violations by Defendant were knowing, willful, and intentional, and
13 Defendant did not maintain procedures reasonably adapted to avoid any such
14 violation.

15 JURISDICTION AND VENUE

16 9. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
17 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

18 10. This action arises out of Defendant's violations of the Fair Credit Reporting
19 Act, 15 U.S.C. §§ 1681 *et seq.* ("FCRA"), the Fair Debt Collection Practices
20 Act, 15 U.S.C. §§ 1692 *et seq.* ("FDCPA") and the Rosenthal Fair Debt
21 Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal
22 Act").

23 11. Because Defendant does business within the State of California, personal
24 jurisdiction is established.

25 12. Venue is proper pursuant to 28 U.S.C. § 1391.

26 13. At all times relevant, Defendant conducted business within the State of
27 California.
28

PARTIES

14. Plaintiff is a natural person who resides in the City of Oakland, State of California.
15. Defendant is located in the City of Norwell, in the State of Massachusetts.
16. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
17. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).
18. Plaintiffs are informed and believe, and thereon allege that Defendant is a furnisher of information as contemplated by 15 U.S.C. 1681s-2(b), that regularly and in the ordinary course of business furnishes information to a consumer credit reporting agency.
19. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
20. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).
21. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

22. Sometime before June 10, 2010, Plaintiff is alleged to have incurred certain financial obligations.
23. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).
24. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).
25. Sometime thereafter, but before June 10, 2010, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt.
26. Plaintiff currently disputes the validity of this alleged debt as the alleged debt was settled with a previous debt collector.
27. Subsequently, but before June 10, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
28. On or about June 2010, Plaintiff discovered that Defendant was reporting a debt on Plaintiff’s credit reports, on a debt that Plaintiff had previously paid.
29. Plaintiff then began communicating with Defendant in order to correct this mistake.
30. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).
31. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).

- 1 32. Plaintiff is informed and believes, and thereon alleges, that Plaintiff's
2 creditworthiness has been repeatedly compromised by the acts and omissions
3 of the Defendant.
- 4 33. On or about June 2010 Plaintiff disputed the account pursuant to 15 U.S.C. §
5 1681i(a)(2) by notifying the credit reporting agencies that the debt in question
6 had previously been paid. Plaintiff also provided documentation establishing
7 this fact.
- 8 34. Subsequently Plaintiff received notification from the credit reporting agencies
9 that Defendant received notice of Plaintiff's dispute pursuant to 15 U.S.C. §
10 1681i(a)(6), and verified the account as being reported accurately on
11 Plaintiff's credit report.
- 12 35. Through this conduct, Defendant communicated or threatened to
13 communicate to a person credit information which was known or which
14 should have been known to be false. Consequently, Defendant violated 15
15 U.S.C. § 1692e(8). Because this violated certain portions of the federal Fair
16 Debt Collection Practices Act as these portions are incorporated by reference
17 in the Rosenthal Fair Debt Collection Practices Act, through California Civil
18 Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.
- 19 36. Plaintiff believes that Defendant, upon receiving notice of their alleged
20 dispute, failed to conduct an investigation with respect to the disputed
21 information as required by 15 U.S.C. § 1681s-2(b)(1)(A).
- 22 37. Plaintiff further believes that Defendant failed to review all relevant
23 information provided by Plaintiff's in their dispute to the credit reporting
24 agencies as required by and in violation of 15 U.S.C. § 1681s-2(b)(1)(B).
- 25 38. Due to Defendant's failure to investigate, Defendant further failed to correct
26 and update Plaintiff's information as required by 15 U.S.C. § 1681s-2(b)(1)
27 (E), thereby causing Defendant to report inaccurate information to the
28

1 pertinent credit reporting agencies in violation of 15 U.S.C. § 1681-s(2)(b)(1)
2 (C).

3 39. Plaintiff's continued efforts to correct Defendant's erroneous and negative
4 reporting of the alleged debt by continued communications and disputes with
5 Defendant and the pertinent CRA's was fruitless.

6 40. Defendant's continued inaccurate and negative reporting of the alleged debt in
7 light of its knowledge of the actual error was willful.

8 41. Defendant's inaccurate and negative reporting damaged Plaintiffs's
9 creditworthiness.

10 42. By inaccurately reporting the alleged debt after notice and confirmation of its
11 errors, Defendant failed to take the appropriate measures as determined in 15
12 U.S.C. §§ 1681-s(2)(b)(1)(D) and (E).

13 43. Through this conduct, Defendant was collecting an amount (including any
14 interest, fee, charge, or expense incidental to the principal obligation) when
15 such amount was not expressly authorized by the agreement creating the debt
16 or permitted by law. Consequently, Defendant violated 15 U.S.C. § 1692f(1).

17 44. Because this violated certain portions of the federal Fair Debt Collection
18 Practices Act as these portions are incorporated by reference in the Rosenthal
19 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
20 this conduct or omission violated Cal. Civ. Code § 1788.17.

21 **CAUSES OF ACTION**

22 **COUNT I**

23 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

24 **15 U.S.C. §§ 1692 ET SEQ.**

25 45. Plaintiff repeats, re-alleges, and incorporates by reference, all other
26 paragraphs.
27
28

46. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

47. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

48. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

49. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

50. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

COUNT III

FAIR CREDIT REPORTING ACT (FCRA)

15 U.S.C. §§ 1681 ET SEQ.

51. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

52. The foregoing acts and omissions constitute numerous and multiple willful, reckless or negligent violations of the FCRA, including but not limited to

each and every one of the above-cited provisions of the FCRA, 15 U.S.C § 1681.

53. As a result of each and every violation of the FCRA, Plaintiff is entitled to any actual damages sustained, statutory damages, punitive damages, and reasonable attorney's fees and costs from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
- An award of actual damages pursuant to California Civil Code § 1788.30(a);
- An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: 6/9/11

By: Joshua B. Swigart
Attorneys for Plaintiff